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No. 84-1414

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

FREDRIC HABERMAN, *et al.*,
Petitioners,

v.

CHEMICAL BANK and WASHINGTON PUBLIC POWER SUPPLY SYSTEM, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Washington

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BRIEF OF PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH COUNTY, WASHINGTON, IN OPPOSITION

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QUESTION PRESENTED

Whether the Due Process Clause requires a state supreme court to allow a motion for leave to intervene where:

(a) The moving parties had notice of the pendency of the proceeding;

(b) the motion for leave to intervene was filed 20 months after the case was commenced;

(c) the motion to intervene was filed after the case had been appealed to the state supreme court, remanded to the trial court, and was again on appeal to the state supreme court; and

(d) the motion to intervene sought remand of the case to the trial court to add defendants, reopen discovery and change the nature of the proceeding from a declaratory judgment action to a suit for monetary damages.

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BRIEF OF PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH COUNTY, WASHINGTON, IN OPPOSITION

Respondent Public Utility District No. 1 of Snohomish County, Washington ("District"), respectfully prays that the Court deny the Petition for a Writ of Certiorari ("Petition") to the Washington Supreme Court submitted by Frederic Haberman, *et al.* ("Petitioners").

OPINIONS BELOW

The District accepts the statement of the proceedings below at page 2 of the Petition.

STATEMENT OF THE CASE

Introduction

This case arises out of the efforts of Petitioners to intervene in the declaratory judgment action commenced by Chemical Bank, as bondholder trustee, to determine the validity of the unconditional payment obligation contained in certain contracts between the Washington Public Power Supply System ("Supply System") and the 88 public utilities, which were participants in Supply System Projects 4 and 5 ("Projects").

The Petitioners sought to intervene in this matter at the last possible moment of a long and arduous trial and appellate process. Rather than intervening when the case was commenced, Petitioners waited. They waited for the trial court to decide the case on a motion for summary judgment. They waited for the Washington Supreme Court to consider the case on appeal, issue a decision, and hear and reject a motion for reconsideration. They waited for the trial court to again consider the case on remand, and to enter a final judgment. And they waited for a second appeal to be taken to the Washington Supreme Court.

At this point in the proceedings, Petitioners requested permission to intervene in order to assert damage claims not germane to the action, to add additional parties, and to seek a second remand to the trial court so that they could reopen discovery to develop a factual record to support their claims. After considering the totality of the circumstances, including Petitioners' ample opportunity to intervene earlier, their adequate representation by Chemical Bank, the fact that the claims Petitioners wished to assert were not appropriate to a declaratory judgment action, and the extreme prejudice which would be suffered by the parties, the Washington Supreme Court denied the motion to intervene.

Background

The declaratory judgment action in which Petitioners belatedly sought to intervene arose out of the default of the Supply System on municipal bonds which it issued to finance construction of two nuclear plants known as Projects 4 and 5 ("Projects"). The Projects were part of a major resource construction effort undertaken by the Supply System to meet projected power shortages.

During the 1960's, the Pacific Northwest experienced a period of sustained and substantial growth. Power demand forecasts prepared by the Bonneville Power Administration ("Bonneville") and others predicted that by the early 1980's, the region's hydroelectric resources would be unable to meet projected needs. Under Bonneville's leadership, a plan was formulated which called for the construction of a large number of thermal generating projects. The Supply System was identified as an organization which could finance and construct a number of nuclear power plants, since it had prior resource construction experience, and was a separate municipal corporation with the authority to issue bonds in its own name.

The first three plants built by the Supply System, Projects 1, 2 and 3, were financed by "Net Billing Agreements" between the Supply System, Bonneville and the region's public and private utilities. These agreements provided the participating utility with a credit against their Supply System payment obligation in an amount equal to their Bonneville power bill. This arrangement, called net billing, provided a Bonneville guarantee of bond payment.

While Projects 1, 2 and 3 were under construction, Bonneville advised its public utility customers that additional plants were needed. Since a Treasury ruling had rendered net billing unavailable, an alternate financing method was needed. When Bonneville issued its Notice of

Insufficiency in June, 1976, giving it the contractual right to ration energy deliveries, drafts of the Project 4 and 5 Participants' Agreement ("Agreement") were focused upon as the only readily available method for financing the additional plants purportedly needed to avoid rationing and shortages.

In this energy crisis climate, and at the urging of Bonneville, 88 of the region's public utilities executed the Agreement with the Supply System. The Agreement imposed an unconditional payment obligation in exchange for a conditional right to receive power. Upon execution of the Agreement, the Supply System issued bonds in its own name and commenced construction of the Projects.

During construction, the Projects were beset with innumerable difficulties, including regulatory changes, labor problems, double digit inflation and construction delays. Further, the predicted energy deficit failed to appear, as demand for electricity decreased sharply due to a severe national recession and substantial wholesale rate increases. With financing at reasonable rates impossible to obtain, on January 22, 1982, the Supply System decided to terminate the Projects.

Proceedings Below

In May, 1982, prior to the first participant payment required by the Agreement after termination, Chemical Bank, as bondholder trustee, filed a declaratory judgment action in the Superior Court of King County, Washington, seeking a declaration that the unconditional payment obligation contained in the Agreement was valid and binding on all participants. On July 20, 1982, Chemical Bank and the Supply System moved for summary judgment, and the trial court ruled in their favor. *Chemical Bank v. Washington Public Power Supply System*, No. 82-2-06840-3, Slip Op. at 3-4 (Super. Ct. King County, Nov. 16, 1982).

An expedited appeal was taken to the Washington Supreme Court. The issue presented was whether state law permitted Washington municipal utilities to execute a contract containing an unconditional payment obligation for generating resources which they did not own, and from which they had only a conditional right to receive electricity. In a comprehensive decision, the Washington Supreme Court reviewed all of the pertinent statutes, and analyzed in detail the provisions of the Agreement. The court concluded that municipal utilities are creatures of statute, possessing only those powers expressly granted to them or necessarily implied. *Chemical Bank v. Washington Public Power Supply System*, 99 Wn.2d 772, 666 P.2d 329 (1983) ("Chem Bank I"). The court noted that it had previously approved public utility participation in contracts containing an unconditional promise to pay only when the public utility had an actual ownership interest in the project. *Chem Bank I*, 99 Wn.2d at 785. The court decided that under applicable Washington state law, absent ownership or control tantamount to ownership, municipal utilities lacked the statutory authority to contractually undertake an unconditional payment obligation. The court held the Agreement to be substantively *ultra vires*, and remanded the matter to the trial court. *Chem Bank I*, 99 Wn.2d at 799.

On remand, Chemical and the Supply System asserted numerous theories to sustain recovery, including restitution, equitable estoppel and some constitutional claims. Based upon abundant Washington precedent, the trial court concluded that as a matter of law equitable theories were not available to enforce a substantively *ultra vires* contract against Washington municipal utilities. *Chemical Bank v. Washington Public Power Supply System*, No. 82-2-06840-3 (Super Ct. King County, August 11, 1983) Order and Judgment.

As to the remaining participants which were not Washington municipalities, the trial court concluded that the basic purpose of the Agreement had been frustrated because its provisions could not function with 70% of the participants statutorily barred from the Agreement. The trial court decided that as a matter of law the remaining participants should be released. *Chemical Bank v. Washington Pacific Power Supply System*, No. 82-2-06840-3 (Super. Ct. King County, August 11, 1983) Order and Judgment.

Chemical Bank and the Supply System pursued a second appeal to the Washington Supreme Court, arguing restitution, equitable estoppel, and a constitutional theory drawing on the Due Process, Takings and Contract Clauses.

At this point in the proceedings, after 20 months of intense litigation, Petitioners filed their motion to intervene in the Washington Supreme Court. Petitioners sought intervention to assert alleged damage claims, to add defendants to the case, and to have the case returned to the trial court for a third time so the Petitioners could conduct discovery. The Washington Supreme Court opined that the efficient administration of justice and the principles of finality required timely submission of motions to intervene. *Chemical Bank v. Washington Public Power Supply System*, 102 Wn.2d 874, 888, 691 P.2d 524 (1984) (Appendix at 29a) ("Chem Bank II"). The court concluded that the motion in this case was not timely, that the interests of Petitioners were adequately represented by Chemical Bank, and that the Petitioners were seeking to inject issues into the case which were being litigated in other forums. On these grounds, the court denied the request for intervention. *Id.*

RELATED LITIGATION

The Petitioners and other bondholders are pursuing a variety of remedies in state court actions. *See, Haberman, et al. v. Washington Public Power Supply System, et al.*, No. 84-2-06452-8 (1984) (Superior Court for King County, Washington) and *Hoffer, et al. v. State of Washington, et al.*, No. 84-2-16459-0 (1984) (Superior Court for King County, Washington). These suits seek relief on state securities laws, misrepresentation, negligence and various equitable theories, and name as defendants many of the parties Petitioners intended to join in the case at bar.

In addition to these state court actions, Chemical Bank, former and current bondholders and various insurance carriers are actively pursuing multiple remedies in federal litigation. In the United States District Court for the Western District of Washington, numerous actions have been filed, including: *Chemical Bank v. Public Utility District No. 1 of Benton County, Washington, et al.*, C83-1080 (1983); *In re Washington Public Power Supply System Securities Litigation*, MDL-551 (1983); and *M.G.I.C. Indemnity Corp. v. Public Utility District No. 1 of Benton County, Washington, et al.*, C84-690 (1984). These actions have been consolidated, and they allege violations of federal and state securities laws, negligence, negligent misrepresentations, and common law fraud. In addition to the participants in the Projects, the Supply System, and its Board of Directors, these suits also name as defendants certain experts involved in various aspects of the projects.[1]

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[1] These experts include Blyth Eastman (the Supply System's financial adviser); Merrill, Lynch, Pierce, Fenner and Smith, Salomon Brothers, Smith Barney, and Prudential-Bache (lead underwriters for Project 4 and 5 bond issues); R. W. Beck (consulting engineer); Ebasco Services and United Engineers & Constructors (architects-engineers); Wood & Dawson and Houghton, Cluck, Coughlin & Riley (Supply System bond counsel and special counsel, respectively); and the Bonneville Power Administration.

These actions provide Petitioners and other bondholders with forums in which to litigate their allegations of negligence, reliance and other claims which they attempted to inject into the case at bar.

REASONS FOR DENYING THE WRIT

Review will not be granted to judgments of state supreme courts which rest on adequate state law grounds. *Herb v. Pitcairn*, 324 U.S. 117 (1954). To be reviewed, a case must present a substantial federal question. *Dixon v. Duffy*, 342 U.S. 33 (1951). This court will not grant review merely to correct errors in decisions of state courts. *Gryger v. Burke*, 334 U.S. 728, *Reh'g denied*, 335 U.S. 837 (1948).

In this case, no substantial federal question is presented. Petitioners filed a motion to intervene at the end of a very long judicial proceeding. They sought to completely alter the nature of the case, by changing it from a declaratory judgment action to a suit for damages. Petitioners desired to add new parties to the proceedings, and in essence to start the entire case from the beginning by returning the matter to the trial court to reopen discovery.

In dealing with this request by Petitioners, the Washington Supreme Court recognized that the damage claims which Petitioners desired to litigate did not belong in this forum, since they were being litigated in other courts when the motion was filed. *Chem Bank II*, 102 Wn.2d at 889 (Appendix at 34a). Further, the court considered all the circumstances, including the fact that Petitioners' interests were being adequately represented by Chemical Bank and the substantial prejudice granting Petitioners' request would entail for other parties. *Chem Bank II*, 102 Wn.2d at 888-889 (Appendix 29a-33a). The Washington Supreme Court exercised its discretion and, based upon state law, denied the motion. *Id.* In so

doing, the court did not abuse its discretion, nor did it deny the Petitioners due process. No substantial federal question is presented by this decision.

I. Denial of an Untimely Motion to Intervene Does Not Present a Substantial Federal Question

Under both Washington and Federal Rules of Civil Procedure, motions for leave to intervene must be presented in a timely fashion.[2] Timeliness is not precisely defined in the rules of civil procedure, but is a matter to be determined from all the circumstances of the case. *Iowa State University Research Foundation v. Honeywell*, 459 F.2d 447 (1972); *Rains v. Lewis*, 20 Wash. App. 117, 579 P.2d 980 (1978). However, motions to intervene after judgment has been rendered will only be granted in unusual circumstances. *McDonald v. E. J. Lavino Co.*, 430 F.2d 1065 (5th Cir. 1970); *Martin v. Pickering*, 85 Wn. 2d, 241, 533 P.2d 380 (1975). Motions for intervention filed after judgment are not favored, and will usually be denied. See, 3B *Moore's Federal Practice* ¶ 24.13[1] at 24-526. The basic rationale for this policy has been stated:

> The interest in expeditious administration of justice does not permit litigation interminably protracted through continuous reopening.

United States v. Blue Chip Stamp Co., 171 F. Supp. 432, 436 (C.D. Cal. 1967), *aff'd sub nom. Thrifty Shoppers Scrip Co. v. United States*, 389 U.S. 975 (1968).

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[2] The language contained in the Washington Rule of Civil Procedure governing intervention (CR 24) and the companion Federal Rule is virtually identical. The Washington Supreme Court routinely relies on federal decisions for guidance when interpreting CR 24. *See*, for example, *Martin v. Pickering*, 85 Wn.2d 241, 244, 533 P.2d 380 (1975), citing *United States v. Wilhelm Reich Foundation*, 17 F.R.D. 96 (D. Me. 1954), *aff'd sub nom. Baker v. United States*, 221 F.2d 957 (1st Cir. 1955), *cert. denied*, 350 U.S. 842 (1955).

In its decision denying intervention, the Washington Supreme Court relied upon these same criteria, and articulated the same policy concerns. The court noted that the motion to intervene ". . . was not filed until this action reached the late stages of the appellate process." *Chem. Bank II*, 102 Wn.2d at 888 (Appendix at 30a). The court recognized that ". . . the efficient management of litigation can be achieved only by timely application." *Chem Bank II*, 102 Wn.2d at 888 (Appendix at 29a). And the court acknowledged that to grant Petitioners' request would ". . . require duplication of work by attorneys and the judicial system at a staggering cost to all." *Id.* Given these circumstances, the Washington Supreme Court properly exercised its discretion to deny the Petitioners' motion.

Petitioners' attempt to bolster their constitutional claim by asserting that a restraining order entered by the trial court prevented their intervention, and that their right to intervene did not ripen until after default. Petition for Writ at 21-22. Under Petitioners' theory, this made their eleventh hour motion timely. This argument seriously mischaracterizes the effect of the restraining order, and attempts to relieve Petitioners of their duty to act in a timely fashion.

The restraining order cited by the Petitioners was issued by the trial court to restrain parties from attempting to trigger an event of default in order to gain access to additional remedies. The purpose of the restraining order was to allow the contractual obligations of the parties to be resolved through litigation without a default being declared. The restraining order did not in any fashion deprive Petitioners of their ability to timely seek party status in the instant case.[3] The assertion that there

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[3] The restraining order entered by the trial court on May 27, 1983, prohibited the declaration of a default, and the exercise of remedies available in the event of a default. It provided in part:

is some sort of causal connection between Petitioners' tardy motion and the existence of the restraining order is without merit.

Even if it is assumed, *arguendo*, that the restraining order did in some fashion prevent Petitioners from intervening until it was vacated by the trial court, this does not explain their extreme tardiness in filing their motion. The restraining order was vacated on July 22, 1983. Had Petitioners intervened at that time, they could have participated in the hearing before the trial court on August 8, 1983, and could have sought party status before the second appeal to the Washington Supreme Court was perfected. Instead, Petitioners failed to take action for an additional six months.

Petitioners are also in error in asserting that Supply System Bond Resolution No. 890 deprived them of the ability to seek party status through intervention. The only portion of this Resolution which is even remotely applicable is Section 11.5, which prohibits bondholders from instituting actions to enforce provisions of Resolution No. 890.[4] Petitioners have cited no provision in the

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3. Chemical Bank, and all persons and entities presently or hereafter owning or holding any bonds, or any interests therein or thereunder, heretofore issued by the Washington Public Power Supply System under or pursuant to its Board of Directors Resolution No. 890, or resolutions supplemental thereto, in connection with its Projects Nos. 4 and 5, are hereby restrained and enjoined, pending entry of judgment in this case declaring the parties' respective rights and obligations, or until further order of the court, from declaring a default under said Resolution No. 890, or resolutions supplemental thereto, or from exercising any remedies upon any such default, including but not limited to (i) issuing a notice of default under or pursuant to Section 11.1(3) of said Resolution No. 890 or (ii) declaring the principal of outstanding bonds, or any interest accrued thereon, to be due and payable immediately . . . .

[4] Section 11.5 of Supply System Resolution No. 890 addresses the right of present bondholders to institute litigation to enforce the resolution, and makes no reference to their right to seek intervention in suits commenced by others. It states in part:

Resolution which impinges on the ability of the bondholders to intervene in a suit instituted by another party. Further, the instant case did not seek to enforce provisions of the Resolution, but only to declare contractual rights and duties under the Agreements. Finally, some of the Petitioners are former bondholders, to whom the provisions of the Resolution had no application, since it only affects those currently holding bonds. The Resolution did not inhibit Petitioners' ability to seek intervention and does not excuse their untimely motion.

It is well recognized by this Court that it is ". . . encumbent upon the appellants . . . to take immediate steps to protect their interests . . ." by timely filing a motion to intervene. *NAACP v. New York*, 413 U.S. 345, 367 (1973). If a party has knowledge of the pendency of a matter yet fails to act until the eleventh hour, they will not be heard to complain if their tardy motion to intervene is denied. *Id.* In such a case, a denial of the motion to intervene does not present a substantial federal question.

Suits by Individual Bondholders; Bondholders' Committee. Except as otherwise specifically provided in this Section, no holder of any of the Bonds or coupons shall have any right to institute any suit, action or proceeding at law or in equity for the enforcement of any provision of the Resolution or the execution of any trust under the Resolution or for remedy under the resolution, unless such holder shall have previously given to the Bond Fund Trustee written notice of the happening of an Event of Default, as provided in this Article, and the holders of at least twenty per cent (20%) in principal amount of the Bonds then outstanding shall have filed a written request with the Bond Fund Trustee and shall have offered it reasonable opportunity either to exercise the powers granted under the Resolution or to institute such action, suit or proceeding in its own name, and unless such Bondholder shall have offered to the Bond Fund Trustee adequate security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby, and the Bond Fund Trustee for a period of sixty (60 days after the receipt by it of such notice, request and offer of indemnity shall have refused to comply with such request . . . .

Petitioners argued below, and assert again in their Petition that their intervention should have been permitted because their interests were not adequately represented. As the Washington Supreme Court held, this assertion is without merit. It is well established that the party moving to intervene has the burden of proof, particularly if they are asserting inadequate representation. *Ordnance Container Corp. v. Sperry Rand*, 478 F.2d 844 (5th Cir. 1973). In a case where the intervening and existing parties' interests are identical, inadequacy of representation is limited to questions of competence, collusion and bad faith. *Stadin v. Union Electric Co.*, 309 F.2d 912 (8th Cir. 1962), *cert. denied*, 373 U.S. 915 (1963).

Petitioners have failed to even allege grounds which would, if proven, satisfy these criteria. At most, they have made vague references to not being adequately represented. The Washington Supreme Court correctly found that throughout the case Chemical Bank had ". . . vigorously pressed the bondholders' claims." *Chem Bank II*, 102 Wn.2d at 888-889 (Appendix at 29a-33a).

Petitioners and Chemical Bank had the identical interests of obtaining judicial vindication of the unconditional payment obligation contained in the Agreement. The fact that Chemical Bank had not at that time filed suits seeking damages in other courts is irrelevant to the existence of their identical interests in the instant case. As the Washington Supreme Court found, Chemical Bank completely fulfilled ". . . the representative function . . ." for the bondholders. *Chem Bank II*, 102 Wn.2d at 889 (Appendix at 34a). Petitioners have provided no support for the proposition that Chemical Bank's representation was in any sense inadequate. This motion to intervene was properly denied.

II. This Court Will Not Disturb the Proper Exercise of Discretion in Denying a Motion to Intervene

It has long been recognized that the decision concerning a motion to leave to intervene is one which must con-

sider all of the circumstances, and which the court below is peculiarly well suited to resolve. *Assoc. of Gen. Contr. of Cal. v. Sec. of Commerce*, 787 F.R.D. 31 (1977). It is an issue " . . . to be determined by the court in the exercise of its sound discretion; unless that discretion is abused, the court's ruling will not be disturbed on review." *NAACP v. New York*, 413 U.S. 345, 366 (1973). This is particularly so when the motion to intervene comes after entry of judgment.

NAACP v. New York is an instructive case in this regard, since it is factually similar to the instant case. In *NAACP v. New York*, intervenors sought to enter the lawsuit three months after it was filed, and just prior to the entry of summary judgment. Intervenors had notice of the proceeding, and had failed to take any action until the eleventh hour. The trial court denied the motion to intervene, and this Court affirmed that decision on appeal. The Court held that the claims of inadequate representation were unsubstantiated, and that the intervenors had failed to take timely action to protect their interests. The Court opined that ". . . the District Court did not abuse its discretion in denying appellants' motion." *NAACP v. New York*, 413 U.S. at 366.

In the instant case, Petitioners had notice of this matter and failed to make action for nearly twenty months. As in *NAACP v. New York*, Petitioners made allegations of inadequate representation, but failed to substantiate them in any manner. In the words of the Washington Supreme Court, Chemical Bank ". . . vigorously pressed bondholders' claims." *Chem Bank II*, 102 Wn.2d at 888-889 (Appendix at 29a-33a). Similarly, the appellants in *NAACP v. New York* and the Petitioners here, had alternative avenues and forums in which to assert their claims. Finally, granting the motion to intervene would have resulted in prejudice to the existing parties to the litigation, due to the late point in the proceedings at which intervention was requested. In denying Petitioners' motion for intervention, the court below did not abuse

its discretion. No basis exists for granting review of this decision.

III. The Due Process Clause Does Not Prohibit State Courts From Interpreting State Law

State courts possess the supreme power to interpret and declare state law, and when such decisions rest on adequate state law grounds they are not subject to review even if they are erroneous. *Kryger v. Wilson*, 242 U.S. 171 (1916); *Central Land Co. v. Laidley*, 159 U.S. 103 (1895). The Due Process Clause is not violated merely by a change in the construction of a statute by a state court. *O'Neil v. Northern Colorado Irrigation Co.*, 242 U.S. 20 (1916). Rather, the due process protection is offended when a state deprives ". . . a person of all existing remedies for enforcement of a right . . . ." *Brinkerhoff-Faris Trust & Sav. Co. v. Hill*, 281 U.S. 673, 682 (1930). Petitioners have suffered no such deprivation.

In the instant case, the Washington Supreme Court had to harmonize the operation of the timely filing requirement contained in Civil Rule 24, and its prior interpretation of a statute which governs party status in declaratory judgment actions. The court decided that the policy considerations of efficient litigation management and finality of judicial decisions mandated that all interventions, regardless of the nature of the action, must be filed in a timely fashion. *Chem Bank II*, 102 Wn.2d at 888 (Appendix at 29a-30a). In so doing, the court overruled portions of *Williams v. Poulsbo Rural Tel. Ass'n*, 85 Wn.2d 241, 533 P.2d 180 (1975).

This ruling was consistent with due process requirements, since it did not deprive Petitioners ". . . of all existing remedies . . . ." *Brinkerhoff-Faris Trust & Sav. Co. v. Hill*, 281 U.S. 673, 682 (1930). As the Washington Supreme Court noted, and as the Petitioners concede, the claims which they sought to inject into this case were

already the subject of litigation in federal court. *Chem Bank II*, 102 Wn.2d at 889 (Appendix at 34a). At most, Petitioners were not afforded an opportunity to duplicate the arguments and efforts previously made by Chemical Bank, acting as bondholder trustee.

Petitioners argue that the interpretation of state law by the Washington Supreme Court altered state law, thereby depriving them of due process. Petition for Writ, pp. 19-20. Once again, Petitioners are wide of the mark. The Due Process Clause does not prohibit state courts from interpreting state law, nor from altering prior interpretations when it is necessary to do so, even though litigants may claim reliance on the previous interpretation. Were it not so, state courts could be deprived of their power to declare the law by the simple expedience of a litigant claiming a reliance interest. Not only would this paralyze the state judiciary, but it would mean that every state court decision changing a prior state law interpretation would present a substantial federal question under the Due Process Clause.

The Due Process Clause has never been viewed as a vehicle for vesting this Court with appellate jurisdiction over all state law questions. As the Court has stated:

> . . . the mere fact that a state court has rendered an erroneous decision on a question of state law, or has overruled principles or doctrines established by previous decisions on which a party relied, does not give rise to a claim under the 14th Amendment or otherwise confer appellate jurisdiction on this court.

Brinkerhoff-Faris Trust & Sav. Co. v. Hill, 281 U.S. 673, 680 (1930).

Based upon this Court's decisions, Petitioners' efforts to conjure a substantial federal question out of a routine clarification of Washington state law must fail.

CONCLUSION

The Due Process Clause does entitle litigants to a meaningful opportunity to be heard in a proceeding appropriate to the nature of the case. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950). However, the opportunity to be heard must be exercised in a timely fashion. The Due Process Clause does not entitle potential intervenors to sit on their rights until the last possible moment, and then demand an opportunity to be heard at a time and in a manner which will prejudice the rights of existing litigants. *NAACP v. New York*, 413 U.S. 345 (1973).

In this case, Petitioners' motion to intervene was untimely, and was properly denied by the Washington Supreme Court. This decision was well within the discretion of the court, was based on Washington law, and should not be disturbed. Petitioners have failed to present any substantial federal question, and their Petition for a Writ of Certiorari should be denied.

Respectfully submitted this 11th day of April, 1985.

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